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ATTORNEYS FOR DEFENDANTS
United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

**CHRISTOPHER
KORTLANDER, HISTORICAL
RARITIES, INC. and THE
CUSTER BATTLEFIELD
MUSEUM, INC.,**

Plaintiffs,

vs.

**BRIAN CORNELL, Bureau of
Land Management Special
Agent in His Individual
Capacity, BART FITZGERALD,
Bureau of Land Management
Special Agent, in His
Individual Capacity, DOUG
GOESSMAN, U.S. Fish and
Wildlife Service Special Agent,
in His Individual Capacity,
and 21 or More Unknown
Federal Agents,
Defendants.**

CV 10-155-BLG-RFC-CSO

**FEDERAL DEFENDANTS’
MOTION TO DISMISS**

Defendants, Brian Cornell, Bart Fitzgerald, and Doug Goessman, hereafter Federal Defendants, move to dismiss the above-captioned proceeding under Rule 12(c), Fed .R. Civ. P. on the basis of statute of limitations and qualified immunity. A claim may be dismissed because it is barred by the statute of limitations when the running of the statute is “apparent on the face of the complaint.” *Huynh v. Chase*

Manhattan Bank, 465 F.3d 992, 997 (9th Cir. 2006). Rule 12(c) serves as a “procedural device to determine the sufficiency of the case before proceeding any further and investing additional resources in it.”

Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* vol. 5C § 1367, p. 217 (3d ed., West 2010). Qualified immunity is “immunity from suit rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial.” *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). “Unless the plaintiff’s allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery.” *Id.* at 526. Based on the allegations in the complaint, this case should be dismissed on statute of limitations and qualified immunity.

Counsel for Plaintiffs, Harold Stanton, has been contacted regarding this motion; as of the time of filing counsel for Defendants had not heard back from Mr. Stanton. However, it is anticipated that Plaintiffs will object to this motion to dismiss.

DATED this 21st day of March, 2011.

MICHAEL W. COTTER
United States Attorney

/s/ Victoria L. Francis
Assistant U.S. Attorney
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of March, 2011, a copy of the foregoing document was served on the following persons by the following means:

<u>1</u>	CM/ECF
<u> </u>	Hand Delivery
<u>2</u>	U.S. Mail
<u> </u>	Overnight Delivery Service
<u> </u>	Fax
<u> </u>	E-Mail

1. Clerk, U.S. District Court

2. Opposing counsel:

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